

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

REJUIO PALACIO,

Plaintiff,

v.

Case No. 2:03-cv-201
HON. ROBERT HOLMES BELL

JERRY HOFBAUER, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff has presented new evidence that he admits was never presented to the Magistrate Judge for consideration. It is inappropriate for plaintiff to submit new evidence in his objections and to argue that the Magistrate Judge erred in the Report and Recommendation. Objections to a report and recommendation on a motion for summary judgment must be based on the evidence available to the Magistrate Judge at the time he considered the motion.

Plaintiff has discounted as not relevant medical evidence which indicates that plaintiff does not have any health problem associated with ETS. However, plaintiff has presented no medical

evidence which could establish that he suffered any medical problems associated with exposure to ETS. The fact that plaintiff suffered with isolated symptoms of bronchitis during a winter month is not evidence that he suffers medical problems associated with ETS. Similarly, plaintiff has failed to show that any defendant acted with deliberate indifference to a medical need for plaintiff to be in a smoke free environment.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

Date: March 3, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE